SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 717

UNITED STATES OF AMERICA AND FEDERAL COMMUNICATIONS COMMISSION,
Petitioners,

v.

RADIO TELEVISION NEWS DIRECTORS ASSOCIATION, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR RESPONDENTS RADIO TELEVISION NEWS DIRECTORS ASSOCIATION, *et al.* and COLUMBIA BROADCASTING SYSTEM, INC.

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We agree that the petition for certiorari should be granted. Respondents have consistently urged that this Court consider the present case together with *Red Lion Broadcasting Co.* v. *FCC*, 127 U. S. App. D. C. 129, 381 F. 2d 908, *cert. granted*, 389 U. S. 968 (1967) (No. 2, this Term),[1] and adhere to that position.

[1]See Memorandum Amicus Curiae on Behalf of the Columbia Broadcasting System, Inc.; Brief of National Broadcasting Co., Inc. as Amicus Curiae, both filed last term in *Red Lion* (No. 600, 1967 Term); respondents' Petition for Certiorari Before Judgment in this case last term, No. 993, *Radio Television News Directors Ass'n* v. *United States, cert denied*, 390 U. S. 922 (1968).

We believe, however, that petitioners have sought to frame the issues much more broadly than is necessary to decide this case. Petitioners suggest that the decision below "can only be read as an expression of serious doubt that the [fairness] Doctrine" and the equal political opportunities provisions of Section 315 of the Communications Act, 47 U. S. C. § 315, are constitutional. Pet., p. 8. In fact, the Court of Appeals never reached these questions; it decided only that the rules impose substantial burdens on the broadcasting of facts and opinion about controversial issues and are cast in terms of such uncertain meaning that they contravene the First Amendment. In so deciding, the Court of Appeals expressly stated that it was not prepared to hold the general fairness doctrine (*i.e.*, the requirement by the FCC that broadcast licensees present opposing views on controversial issues) unconstitutional,[2] and it did not even mention the constitutionality of Section 315.

In support of the judgment below, respondents Radio Televison News Directors Associaton, *et al.* and Columbia Broadcasting System, Inc. will present the following questions:

1. Whether, as the Court of Appeals held, the Commission's personal attack and political editorial rules abridge the freedom of speech and press guaranteed by the First Amendment. (This includes the more particular question whether, if the public interest in diversity of broadcast opinion constitutionally justifies any re-

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[2]The Court of Appeals drew "a distinction between the personal attack rules, whether incorporated in an *ad hoc* ruling such as occurred in *Red Lion* or in formal rules such as have now been promulgated by the Commission, and the Fairness Doctrine . . . ." The court concluded that "[w]ith that distinction in mind, we are not prepared to hold that the Fairness Doctrine is unconstitutional. Moreover, we do not believe that it is necessary to decide that question in this review." 400 F. 2d 1002, 1017-18.

straints on the freedom of broadcast speech, the present rules are more sweeping and burdensome than necessary to achieve this objective.)

2. Whether, if such restrictions are ever constitutional, the present rules are supported by the requisite Commission investigation and findings that fair diversity of opinion will not reach the public in the absence of such rules.

3. Whether the Commission's rules, if otherwise valid under the First Amendment, are authorized by the Communications Act.

We respectfully suggest that, if certiorari is granted, this case be placed on the Court's regular calendar for argument with *Red Lion*, and that, because of the complexity of the issues and the diversity of views presented, the Court allow full time for argument in each case. Should the Court feel that less than the full time is warranted for both cases, then we suggest that this case be consolidated with *Red Lion* and a total of three hours be allowed, with the time to be divided equally between this case and *Red Lion*.

Respectfully submitted,

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